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Civil Procedures. 1/4/06

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

U.S. DIST. COURT EAST DIST. WISC.	
FILED	
JAN - 4 2006	
AT	O'CLOCK
SOFRON B. NEDILSKY	

ANDREW MATTHEW OBRIECHT,

Plaintiff,

v.

Case No. 05-C-1171

MATTHEW J. FRANK,
and BYRON BARTOW,

Defendants.

DECISION AND ORDER

The plaintiff, Andrew Obrieht, who is presently incarcerated at the Wisconsin Resource Center, lodged a *pro se* civil rights complaint under 42 U.S.C. § 1983 and filed a petition for leave to proceed *in forma pauperis*. By order of December 29, 2005, the court granted the plaintiff leave to proceed *in forma pauperis* with respect to his due process claims concerning his involuntary confinement and unwanted medical treatment. (Docket # 14.) Presently before the court is the plaintiff's motion for leave to file an amended complaint to name an additional six defendants.

Rule 15(a) of the Federal Rules of Civil Procedure states that a party may amend a pleading once as a matter of course any time before a responsive pleading is served. However, if a plaintiff seeks to add additional defendants, he must first obtain leave from the court, regardless of when the amended complaint was filed. *Moore v. State of Indiana*, 999 F.2d 1125, 1128 (7th Cir. 1993). The problem with the plaintiff's application is that it does not include a proposed amended complaint. *See* Civ. L. R. 15.1 (E.D. Wis.) ("Any party submitting a motion to amend must attach to the motion

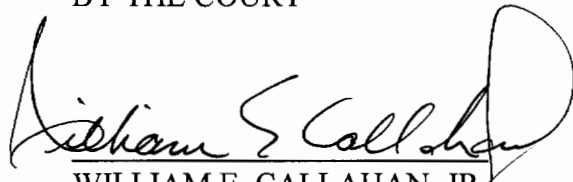
the original of the proposed amended pleading.”) Accordingly, the plaintiff’s motion to amend the complaint will be denied, without prejudice.

In the event that the plaintiff renews his motion to amend the complaint, he is apprised that any proposed amended pleading must incorporate the allegations set forth in his initial complaint because an amended complaint supercedes a prior complaint. *See Duda v. Bd. of Ed. of Franklin Park Public School District No. 84*, 133 F.3d 1054, 1056 (7th Cir. 1998). Any matters from the initial pleading which are not set forth in the amended complaint are, in effect, withdrawn. *Id.* Further, the plaintiff is reminded that any motion filed with the court must set forth the rule pursuant to which it is made as required under Civil Local Rule 7.1(a), and must be accompanied by a supporting brief or certificate stating that no brief will be filed. *See* Civ. L.R. 7.1(a)(1) and (2). Failure to comply with either (1) or (2) of Civil Rule 7.1(a) allows the court to deny the motion as a matter of course. *See* Civ. L.R. 7.1(a).

IT IS THEREFORE ORDERED that the plaintiff’s motion for leave to file an amended complaint (Docket #13) be and hereby is **DENIED**, without prejudice.

Dated at Milwaukee, Wisconsin this 4th day of January, 2006.

BY THE COURT


WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge